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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service )  
Fourth Order on Reconsideration )

CC Docket No. 96-45

**OPPOSITION OF BELL ATLANTIC-NEW JERSEY, INC.  
TO PETITION FOR EXPEDITED DECLARATORY RULING**

The Commission should not let itself become a pawn in an attempt by the New Jersey Division of Ratepayer Advocate ("Advocate") to forum-shop a matter that is properly being considered by the New Jersey Board of Public Utilities ("NJ Board").

In its petition, the Advocate asks the Commission to determine the status for the purposes of universal service reimbursement of special rates in effect in New Jersey for schools and libraries (called "Access New Jersey rates"). *See* Petition for Expedited Declaratory Ruling (filed Mar. 19, 1998) ("Petition"). The Advocate itself has properly brought this very issue to the NJ Board, where it is ripe for decision. These are intrastate rates that are under the jurisdiction of the NJ Board, which is most familiar with the facts and findings that led to their adoption. Therefore, the Commission should decline to issue a declaratory ruling.

In any event, even if the Commission were to address the merits of the petition, the simple fact is that the Access New Jersey rates do not qualify under the applicable Universal Service orders as the lowest corresponding prices for purposes of determining the reimbursement that Bell Atlantic is entitled to receive when it provides discounted service to schools and libraries and are not in the base for use in calculating the discounted rates available to schools and libraries. Therefore, the petition should be denied.

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I. The Status of An Intrastate Rate Is Properly Determined By the State, Not This Commission.

The Advocate asks the Commission to determine the universal service status of special rates for schools and libraries that were adopted in 1997 as part of a complex series of proceedings that began five years earlier. *See* Petition at 4-10. The Access New Jersey school and library rates were part of a package of commitments that Bell Atlantic-New Jersey, Inc. ("Bell Atlantic") made to the NJ Board in a stipulation that resolved numerous pending issues. *See* Petition, Att. 1.

Access New Jersey rates are special intrastate charges that are available only to a specific subset of customers, those schools and libraries that do not elect higher federal Universal Service discounts. The details surrounding the adoption of those rates, whether they cover their costs, and whether they are being subsidized, are matters of which the NJ Board has intimate knowledge, having participated in the development of the Access New Jersey rates. And, under the Act, the NJ Board has exclusive jurisdiction over issues surrounding that intrastate rate. *See* 47 U.S.C. § 152(b). Yet these are the issues that the Advocate asks this Commission to decide. It should not do so.

In its rulemaking proceedings to implement the universal service provisions of the Act, the Commission previously established the *standard* to use in determining the lowest corresponding price of a service for purposes of determining the amount of reimbursement a carrier is entitled to receive when it provides discounted services to schools and libraries. In the *Fourth Order*, the Commission clarified that a price that constitutes a "special regulatory subsidy" or that "appeared in a contract negotiated under very different conditions" should not be

considered when determining the lowest corresponding price.<sup>1</sup> Applying those standards to the facts of particular intrastate rates, however, is within the purview of the state regulator. See 47 U.S.C. § 254(f) ("A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."). See also *Report and Order*, 12 FCC Rcd 8776, ¶ 490 (1997) (giving schools, libraries, and carriers the right to seek recourse from the states if they believe that the lowest corresponding rates for intrastate services are too high or too low). Otherwise, this Commission, not the states, could be forced to adjudicate whether rates for a myriad of intrastate services are being subsidized, and the circumstances under which they were negotiated, matters unquestionably outside its jurisdiction.

Moreover, even if the Commission were to find that it has jurisdiction to evaluate the status of the intrastate Access New Jersey rates, it should abstain from doing so. These rates were established by the state, after hearings before the NJ Board and negotiations with its staff, and the NJ Board has detailed knowledge of the facts surrounding their adoption. Among other things, the NJ Board has before it the relevant information that will assist in determining whether or not the rates constitute a "special regulatory subsidy" and whether they are "state-supported." And this issue is now squarely before the NJ Board as part of its investigation of local competition, where it is ripe for decision.<sup>2</sup>

In fact, until the instant Petition, the Advocate's own actions showed that it considered the NJ Board to be the appropriate forum to adjudicate this issue. On October 23,

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<sup>1</sup> *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, FCC 97-420, ¶ 141 (rel. Dec. 30, 1997) ("Fourth Order").*

<sup>2</sup> See *In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631.

1997, the Advocate and Bell Atlantic filed a joint letter asking the NJ Board to determine a number of related issues, including status of the Access New Jersey rates under the universal service provisions applicable to schools and libraries. More recently, on January 14, 1998, the Advocate filed comments specifically asking the NJ Board to decide this precise issue in its favor. Bell Atlantic responded on February 6, 1998. *See* Petition, Att. 4. The Advocate also filed reply comments to the NJ Board and a stay request on March 19, 1997, the same day it attempted an end-run around the NJ Board by filing the instant Petition.<sup>3</sup>

In short, largely as a result of the Advocate's own efforts, the issue raised in the Petition has been fully presented and briefed before the NJ Board. Instead of undertaking a duplicate proceeding and attempting to ascertain facts that are already of record before the NJ Board, the Commission, as a matter of comity as well as law, should defer to that body and decline to address the issue here, rather than condone the Advocate's blatant attempt at forum shopping.

## II. The Access New Jersey Rates Do Not Qualify As Lowest Corresponding Prices.

In any event, the Advocate is wrong on the merits. The Access New Jersey rates do not qualify as the lowest corresponding prices for determining universal service reimbursement. Instead, they constitute a "special regulatory subsidy," a "contract negotiated

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<sup>3</sup> After filing the instant Petition, the Advocate even took credit for the successful settlement of this manner and sought to apply similar procedures to other proceedings. Letter dated March 25, 1998 to Edward D. Beslow, Acting Secretary, NJ Board of Public Utilities, from Blossom A. Peretz, Esq., Ratepayer Advocate.

under very different conditions,” and “state-supported rates,” any of which make them exempt from qualifying as a lowest corresponding rate. *See Fourth Order* at ¶¶ 141, 196.<sup>4</sup>

First, they are a “special regulatory subsidy.” The Advocate’s only basis for concluding that the rates are not subsidies to schools and libraries is its assertion that Bell Atlantic never contended that the Access New Jersey rates are below cost. Petition at 13. But the short answer is that the Commission has expressly held that there is no requirement for it to do so. *Fourth Order* at ¶ 141. Moreover, the Advocate admits that the reduced price available to schools and libraries under Access New Jersey would be “funded completely by [Bell Atlantic]” to the extent necessary. Petition at 18-19. The Advocate appears to be arguing that a service that it is being supported by Bell Atlantic’s shareholders rather than other ratepayers is not being subsidized.<sup>5</sup> There is no basis for that argument. The State of New Jersey’s Plan for an Alternative Form of Regulation gave Bell Atlantic the opportunity to realize the benefits of a price cap-type plan. In exchange, among other conditions, Bell Atlantic agrees to pass along to schools and libraries the Access New Jersey pricing benefits that would not otherwise be available in the marketplace. These passed-along subsidies are “regulatory,” because they were embodied in a stipulation that was adopted by state regulators as part of a settlement of regulatory litigation. *See* Petition at Att. 1. Finally, the rates are certainly “special,” because they apply only to a specified segment of schools and libraries – those served by Bell Atlantic

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<sup>4</sup> In addition, because schools and libraries that have chosen federal Universal Service discounts (in cases where the federal discounted rates are lower) are ineligible to subscribe to Access New Jersey rates, those who are eligible for Access New Jersey rates are not “similarly situated” to those who receive federal discounts. *See Report and Order* at ¶ 484.

<sup>5</sup> The service covers its direct costs but earns a lower margin than most other Bell Atlantic services offered in New Jersey.

that elect to subscribe to the Access New Jersey rates in lieu receiving of the federal Universal Service discount. Therefore, they qualify as a "special regulatory subsidy."

Second, the rates were negotiated under "very different conditions" from the normal tariff process. They were, as discussed above and shown in the Stipulation, part of a package of commitments that Bell Atlantic negotiated with the Advocate and NJ Board staff, and which was accepted by the NJ Board to resolve issues in pending regulatory proceedings. *See* Petition at Att. 1.<sup>6</sup> The parties always anticipated that the Access New Jersey rates would be separate and independent of any discounted rates that were ultimately made available under the Universal Service program, as shown in ¶ A2(g) of the Stipulation:

If a State or Federal Universal Service policy is established that provides discounts to schools and libraries for services listed in Schedule A, schools and libraries will be able to obtain whichever discount is greater.

Accordingly, the Access New Jersey rates were not, as the Advocate claims, part of a traditional contract between a carrier and its customer. Petition at 14-15.

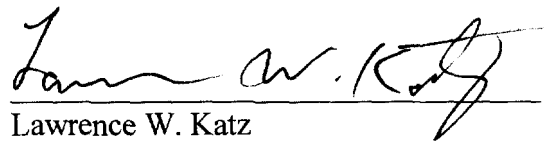
Third, the rates are "state-supported." They were adopted as part of a continuum of benefits flowing from New Jersey's Plan for an Alternative Form of Regulation. Those benefits manifested themselves, in part, as a comprehensive effort by New Jersey to provide schools and libraries with reduced-price telecommunications services and to accelerate the deployment of advanced telecommunications technology.

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<sup>6</sup> The Access New Jersey rates did not result from negotiations between Bell Atlantic and any schools or libraries.

Based upon these findings, if the Commission reaches the substance of the Petition, which it should not, it should find that the Access New Jersey rates are outside the lowest corresponding price provisions of its rules, and that the universal service discounts apply to the generally tariffed rates, not those in Access New Jersey.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

Michael E. Glover  
Barry S. Abrams  
Of Counsel

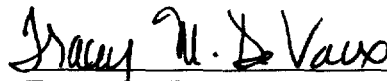
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Attorney for the Bell Atlantic  
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April 20, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of April, 1998 a copy of the foregoing "Opposition of Bell Atlantic-New Jersey, Inc. to Petition for Expedite Declaratory Ruling" was sent by first class mail, postage prepaid, to the parties on the attached list.

  
Tracey M. DeVaux



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